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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



E2

Date: **JUN 20 2011**

Office: BOSTON, MA

FILE:

IN RE: Applicant:

APPLICATION: Application for Certificate of Citizenship under Former Section 301(a)(7)(1955) of the Immigration and Nationality Act; 8 U.S.C. §1401(a)(7)(1955)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Boston, Massachusetts, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on February 19, 1955 in Cape Verde. The applicant's parents, as indicated on his birth certificate, are [REDACTED]. The applicant's father was born in Portugal on April 27, 1924, but acquired U.S. citizenship at birth through a U.S. citizen parent. The applicant's mother became a U.S. citizen upon her naturalization on May 23, 2002. The applicant was admitted to the United States as a lawful permanent resident on October 29, 1963. The applicant seeks a certificate of citizenship claiming that he derived U.S. citizenship through his father under section 320 of the Act, 8 U.S.C. § 1431.

The director denied the applicant's citizenship claim upon finding that he had failed to establish his eligibility under former section 301(a)(7) of the Act, 8 U.S.C. §1401(a)(7)(1955), because he could not demonstrate that his father was physically present in the United States as is statutorily required. Further, the director found that the applicant did not acquire U.S. citizenship upon his mother's naturalization because he was over the age of 18 when she naturalized, or under section 320 of the Act, as amended by the Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (CCA), because it applies only to applicants under 18 years of age as of the February 27, 2001 (the effective date of the CCA).

On appeal, the applicant maintains that he acquired U.S. citizenship pursuant to section 320 of the Act, as amended by the CCA. *See Letter Brief in Support of Appeal*, dated October 2, 2010.

The AAO reviews these proceedings *de novo*. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The applicable law for transmitting citizenship to a child born abroad when one parent is a U.S. citizen is the statute that was in effect at the time of the child's birth. *See Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1028 n.3 (9th Cir. 2001) (internal citation omitted). The applicant in the present matter was born in 1955. Former section 301(a)(7) of the Act therefore applies to the present case.¹

Former section 301(a)(7) of the Act stated, in pertinent part, that the following shall be nationals and citizens of the United States at birth:

[A] person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less

¹Section 301(a)(7) of the former Act was re-designated as section 301(g) upon enactment of the Act of October 10, 1978, Pub. L. 95-432, 92 Stat. 1046. The substantive requirements of this provision remained the same until the enactment of the Act of November 14, 1986, Pub. L. 99-653, 100 Stat. 3655.

than ten years, at least five of which were after attaining the age of fourteen years: *Provided*, That any periods of honorable service in the Armed Forces of the United States by such citizen parent may be included in computing the physical presence requirements of this paragraph.

In order to acquire U.S. citizenship at birth under former section 301(a)(7) of the Act, the applicant must therefore establish that his father was physically present in the United States for 10 years prior to 1955, five of which were after the age of 14 (after 1938). The applicant's father was born abroad to a U.S. citizen parent and did not arrive in the United States until 1962. *See Declaration of Felisberto R. DoCanto* at ¶¶ 3, 6. The applicant therefore cannot establish that his father had the required physical presence in the United States prior to his birth and did not acquire U.S. citizenship under former section 301(a)(7) of the Act.

The applicant maintains that he acquired U.S. citizenship under section 320 of the Act. Section 320 of the Act, as amended by the CCA, applies only to cases where the applicant was not yet 18 years old as of its February 27, 2001 effective date. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153, 156 (BIA 2001) (en banc). The applicant's eighteenth birthday was in 1973. He was over the age of 18 when the CCA came into effect, and is therefore not eligible for benefits under section 320, as amended by the CCA.

The applicant is also ineligible for U.S. citizenship under former sections 320 or 321 of the Act, 8 U.S.C. §§ 1431 and 1432, as previously in force prior to February 27, 2001. Former sections 320 and 321 of the Act provided for acquisition of U.S. citizenship upon the naturalization of a parent prior to an applicant's eighteenth birthday, not through a native-born U.S. citizen parent. The applicant's mother naturalized after his eighteenth birthday, and his father acquired U.S. citizenship at birth. The applicant also did not derive U.S. citizenship under former section 322 of the Act, 8 U.S.C. § 1433, because, in part, he did not apply for a certificate of citizenship before he turned 18, because no such application was approved, and because he did not take an oath of allegiance prior to his 18th birthday.

"There must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship." *Fedorenko v United States*, 449 U.S. 490, 506 (1981). The applicant must meet his burden of proof by establishing the claimed citizenship by a preponderance of the evidence. 8 C.F.R. § 320.3. Here, the applicant has not met this burden. Accordingly, the applicant is not eligible for a certificate of citizenship and the appeal will be dismissed.

ORDER: The appeal is dismissed.